

Consensual Private Admonition - Board Case No. 12, 2002. **Date of Sanction: May 31, 2002.** A panel of the Preliminary Review Committee of the Board on Professional Responsibility authorized the Office of Disciplinary Counsel (“ODC”) to offer the Respondent lawyer the sanction of a private admonition, with conditions, for violation of Rules 1.15(b), 1.15(d) and former Interpretive Guideline No. 2, and 8.4(d) of the Delaware Lawyers’ Rules of Professional Conduct (“Rules”). This matter came to the attention of the ODC from a random audit performed at the direction of the Lawyers’ Fund for Client Protection.

Rule 1.15(b) states that “[u]pon receiving funds or other property in which a client or third person has an interest, a lawyer shall . . . promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.” The PRC determined that there was probable cause that the Respondent has violated this Rule by failing to file and timely pay payroll taxes for portions of 1998, 1999, 2000, and 2001. All payroll taxes are current through 2002. Rule 1.15(d) and former Interpretive Guideline No. 2 provide that a lawyer must maintain and reconcile monthly each office bank account to the bank statement balance. The PRC determined that there was probable cause that the Respondent has violated these Rules by failing to perform meaningful, monthly reconciliations of his operating account. All monthly reconciliations of this account have been performed to date. Lastly, Rule 8.4(d) states that “[i]t is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.” The PRC determined that there is probable cause that Respondent failed to timely file and pay payroll taxes and failed to accurately reflect that Respondent was not performing monthly reconciliations of the firm’s operating account on the 1999, 2000, and 2001 Certificates of Compliance.

The Respondent acknowledged having violated these Rules and consented to the imposition of the private admonition, subject to the conditions of payment of costs of the ODC’s investigation; providing quarterly, written self-reports to ODC for a period of one year, detailing compliance, or lack thereof, with all recordkeeping requirements of Rule 1.15 and payroll tax obligations; and causing to have filed with ODC, on a semi-annual basis for a period of 18 months, a report and affidavit of a licensed certified public accountant verifying that the accountant has performed an independent review of all of Respondent’s law office books and records and payroll tax filings and reporting the status of compliance, or lack thereof, with the recordkeeping requirements of Rule 1.15 and payroll tax obligations.

The PRC considered the following mitigating factors: the absence of a prior disciplinary record; Respondent’s self-report to the Court, on Certificates of Compliance, of payroll tax problems; full and free disclosure to the disciplinary authorities and cooperative attitude; prompt efforts to eliminate the deficiencies; expressed remorse for the misconduct. In aggravation, the PRC considered Respondent’s substantial experience in the practice of law, albeit not in the capacity of a practitioner as it relates to books and records and payment of payroll taxes.